

SECOND REGULAR SESSION

# SENATE BILL NO. 1307

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATOR GIBBONS.

Read 1st time February 26, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal sections 573.010 and 573.037, RSMo, and to enact in lieu thereof two new sections relating to child pornography, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 573.010 and 573.037, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 573.010 and 573.037, to read as follows:

573.010. As used in this chapter the following terms shall mean:

- (1) "Child", any person under the age of fourteen;
- (2) "Child pornography", any obscene material [or performance] depicting sexual conduct[,] **or sadomasochistic abuse**, sexual contact[,] or a sexual performance, as these terms are defined in section 556.061, RSMo, [and which has as one of its participants or portrays as an observer of such conduct, contact, or performance a child under the age of eighteen] **or bestiality that portrays in full or in part a child under the age of eighteen, or material in which a child is nude or partially clothed and the focus is the child's genitalia or pubic area and the material is intended to elicit a sexual response in the viewer, or the material has a child as a participant, or portrays what appears to be a child under the age of eighteen, as an observer or participant of sexual conduct;**

- (3) "Displays publicly", exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway or public sidewalk, or from the property of others or from any portion of the person's store, or the exhibitor's store or property when items and material other than this material are offered for sale or rent to the public;

- (4) "Explicit sexual material", any pictorial or three dimensional material depicting

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of postpubertal human genitals; provided, however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition;

(5) "Furnish", to issue, sell, give, provide, lend, mail, deliver, transfer, circulate, disseminate, present, exhibit or otherwise provide;

(6) "Material", anything printed or written, or any picture, drawing, photograph, motion picture film, videotape or videotape production, or pictorial representation, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or stored computer data, or anything which is or may be used as a means of communication. "Material" includes undeveloped photographs, molds, printing plates, stored computer data and other latent representational objects;

(7) "Minor", any person under the age of eighteen;

(8) "Nudity", the showing of postpubertal human genitals or pubic area, with less than a fully opaque covering;

(9) "Obscene", any material or performance is obscene if, taken as a whole:

(a) Applying contemporary community standards, its predominant appeal is to prurient interest in sex; and

(b) The average person, applying contemporary community standards, would find the material depicts or describes sexual conduct in a patently offensive way; and

(c) A reasonable person would find the material lacks serious literary, artistic, political or scientific value;

(10) "Performance", any play, motion picture film, videotape, dance or exhibition performed before an audience of one or more;

(11) "Pornographic for minors", any material or performance is pornographic for minors if the following apply:

(a) The average person, applying contemporary community standards, would find that the material or performance, taken as a whole, has a tendency to cater or appeal to a prurient interest of minors; and

(b) The material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and

(c) The material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors;

(12) "Promote", to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same, by any means including a computer;

(13) "Sadomasochistic abuse", flagellation or torture by or upon a person as an act of sexual stimulation or gratification;

(14) "Sexual conduct", actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification;

(15) "Sexual excitement", the condition of human male or female genitals when in a state of sexual stimulation or arousal;

(16) "Wholesale promote", to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purposes of resale or redistribution.

573.037. 1. A person commits the crime of possession of child pornography if, knowing of its content and character, such person possesses any obscene material [that has a child as one of its participants or portrays what appears to be a child as an observer or participant of sexual conduct] **depicting child pornography**.

2. [Possession of child pornography is a class A misdemeanor unless the person has pleaded guilty to or has been found guilty of an offense under this section, in which case it is a class D felony] **A person in possession of more than twenty items of child pornography shall be considered to have knowledge regarding the content and character of the items.**

3. **It shall be an affirmative defense to possession of child pornography that the defendant:**

(1) **Acted promptly and took reasonable steps to destroy each item of child pornography and did not allow any person other than law enforcement agents to view such material; or**

(2) **Promptly reported the matter to the nearest law enforcement agency and permitted the agency to have access to such material in order to remove the material or attempt to determine how the child pornography was sent to, and received by, the defendant.**

4. **The age of a child that appears to be under the age of eighteen, who is depicted in child pornography, may be established pursuant to the provisions of subsection 3 of section 573.050. The child need not be identified or appear at any proceeding concerning the possession of the child pornography.**

5. **Possession of child pornography is a class C felony for possession of not more than twenty items. Possession of more than twenty items of child pornography is a class B felony.**

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